

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA,	.	Case No. 1:09-cr-147
	.	
Plaintiff,	.	
	.	<b>Arraignment and Plea</b>
- v -	.	
	.	Tuesday, October 13, 2009
FRANK G. LARSON,	.	10:00 AM
	.	
Defendant.	.	Cincinnati, Ohio
. . . . .	.	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

For the Plaintiff: KEVIN C. CULUM, ESQ.  
MACHELLE L. JINDRA, ESQ.  
United States Department of Justice  
Antitrust Division  
Carl B. Stokes U.S. Court House  
801 West Superior Avenue, 14th Floor  
Cleveland, Ohio 44113-1857

For the Defendant: WILLIAM MICHAEL, JR., ESQ.  
Dorsey & Whitney LLP  
50 South Sixth Street  
Suite 1500  
Minneapolis, Minnesota 55402-1498

Also present: Laurie Cooke, Pretrial Services  
Laura S. Jensen, Probation Officer

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Deputy: Darlene Maury

Court Reporter: Luke T. Lavin, RDR, CRR  
838 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202

P R O C E E D I N G S

(In open court at 10:00 AM.)

THE COURT: Proceed, Ms. Maury.

COURTROOM DEPUTY: Judge, on the docket this morning is Criminal Action 09-147, United States of America versus Frank G. Larson. Appearing on behalf of the government is Kevin Culum and Machelie Jindra. Appearing on behalf of the defense is William Michael, and the defendant is present in the courtroom.

THE COURT: Mr. Michael, will you introduce yourself to the Court and explain your presence.

MR. MICHAEL: Yes, Judge.

Thank you, Your Honor. Good morning. My name is William Michael. I represent Mr. Larson. Your Honor, first I would just point out that I have not yet been able to file the pro hac vice papers. We're waiting on the certificates of good standing from the states of Florida and Minnesota. I would represent to the Court that I am in good standing in both of those states.

Mr. Larson is present and has read through the paperwork and is ready to proceed, Your Honor.

THE COURT: Let's see. Are you admitted to a district court somewhere?

MR. MICHAEL: I am, Judge. I'm admitted to the District Court of Minnesota. I've also appeared in the

1 Southern District of New York, the Eastern District of New  
2 York, the Southern District of Florida, the District of North  
3 Dakota, the District of Utah, the Northern District of  
4 California, and several states and perhaps other districts.

5 THE COURT: Well, I appreciate that. That gives me a  
6 little solace.

7 MR. MICHAEL: All right.

8 THE COURT: Thank you.

9 MR. MICHAEL: And I apologize, Judge, for the  
10 paperwork not being in on time.

11 THE COURT: All right.

12 Let's see. Are you Frank G. Larson, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you the defendant in this case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you represented by a lawyer?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: And what's your lawyer's name?

19 THE WITNESS: Bill Michael.

20 THE COURT: Mr. Michael, have you explained to Mr.  
21 Larson his rights to have this matter considered by the grand  
22 jury?

23 MR. MICHAEL: I have, Judge.

24 THE COURT: And do you have any advice for him in that  
25 regard?

1 MR. MICHAEL: I do, Judge. We have agreed to waive  
2 the indictment. We have the forms here ready to be signed to  
3 waive indictment by a grand jury and to allow the United States  
4 Department of Justice to proceed by way of Information on this  
5 count.

6 THE COURT: And do you feel the client's acting in his  
7 best interest in proceeding in this manner?

8 MR. MICHAEL: I do, Judge.

9 THE COURT: Thank you.

10 Mr. Larson, I want you to please understand that by waiving  
11 your right to have the matter considered by the grand jury,  
12 you're not giving up any of your other constitutional rights.  
13 You have a right to plead not guilty, be tried by a jury, be  
14 represented by a lawyer throughout the proceedings, face the  
15 prosecution witnesses, compel witnesses to attend and testify  
16 in your behalf, and the United States must prove to a jury of  
17 12 individuals beyond a reasonable doubt certain things that  
18 you are guilty of this crime. And you can't be put on trial  
19 here in this court unless you decide to waive your right to  
20 have a grand jury consider the case.

21 Now, in order so that I can be assured that you know what  
22 is charged, it's necessary that, I believe, at this time that  
23 we read together the Information.

24 And in that regard, Mr. Culum, do you have a motion to  
25 make?

1 MR. CULUM: Yes, Your Honor. I would like to file a  
2 motion to unseal the Information and all papers along with it.

3 And any other motion I need to file?

4 THE COURT: That's the magic motion.

5 MR. CULUM: Okay. I earlier gave it to Darlene.

6 THE COURT: I had it in front of me. I just wanted to  
7 see what you were up to.

8 The Court has ordered the unsealing of the documents, and  
9 they're all a matter now of public record as we go through this  
10 matter.

11 MR. CULUM: Thank you, Your Honor.

12 THE COURT: And if you would please present to the  
13 record the Information at this time.

14 MR. CULUM: Thank you, Your Honor.

15 THE COURT: And, Mr. Larson, please listen as he does  
16 so. I may ask some questions about it. And if you have any  
17 questions during this proceedings, please ask them; ask them  
18 directly of me. And if you're concerned about addressing me  
19 directly, ask Mr. Michael, and he'll be glad to address me on  
20 your behalf.

21 THE DEFENDANT: Okay.

22 THE COURT: Because it's most important that you and I  
23 understand what's going on here, and that's why it's necessary  
24 that I be assured that you do understand.

25 THE DEFENDANT: Okay.

1 THE COURT: Proceed, sir.

2 MR. CULUM: Thank you, Your Honor.

3 May I sit while I read?

4 THE COURT: Go ahead.

5 MR. CULUM: Okay.

6 The Information is entitled "United States of America v.  
7 Frank Larson." It is entitled also a "Conspiracy To Restrain  
8 Trade," in violation of 15 U.S.C. Section 1.

9 The United States of America, acting through its attorney,  
10 charges:

11 Paragraph 1. Frank G. Larson is hereby made a defendant on  
12 the charge stated below.

13 Paragraph 2. Beginning at least as early as March 1st,  
14 2005, and continuing until at least July 17th, 2007, the exact  
15 dates being unknown to the United States, the defendant and  
16 co-conspirators entered into and engaged in a conspiracy to  
17 suppress and eliminate competition by allocating packaged-ice  
18 customers in southeastern Michigan and the Detroit, Michigan,  
19 metropolitan area. The charged conspiracy unreasonably  
20 restrained interstate trade and commerce, in violation of  
21 Section 1 of the Sherman Act, 15 U.S.C. Section 1.

22 Paragraph 3. The charged conspiracy consisted of a  
23 continuing agreement, understanding and concert of action among  
24 the defendant and co-conspirators, the substantial terms of  
25 which were to allocate packaged-ice customers in southeastern

1 Michigan and the Detroit, Michigan, metropolitan area.

2 Subheading II, the Means And Methods Of The Conspiracy.

3 Paragraph 4. For the purposes of forming and carrying out  
4 the charged conspiracy, the defendant and co-conspirators did  
5 the following things, among others:

6 (a) participated in conversations to discuss packaged-ice  
7 customers in southeastern Michigan and the Detroit, Michigan,  
8 metropolitan area;

9 (b) agreed during those conversations to allocate packaged-  
10 ice customers in southeastern Michigan and the Detroit,  
11 Michigan, metropolitan area;

12 (c) exchanged information during those conversations for  
13 the purpose of monitoring and enforcing adherence to the  
14 agreements to allocate customers in southeastern Michigan and  
15 the Detroit, Michigan, metropolitan area; and

16 (d) refrained from competing for packaged-ice customers  
17 that were so allocated.

18 III. Defendant And Co-Conspirators.

19 Paragraph 5. During the period covered by this  
20 Information, the defendant was employed by Artic Glacier  
21 International Inc., which will be referred to as Artic Glacier,  
22 a corporation organized and existing under the laws of the  
23 state of Delaware, which does business in multiple states, with  
24 its principal place of business in St. Paul, Minnesota. During  
25 the period, the defendant was most recently employed by Artic

1 Glacier as its executive vice president of operations.

2 Paragraph 6. Various individuals and corporations, not  
3 made defendants in this Information, participated as  
4 co-conspirators in the offense charged and performed acts and  
5 made statements in furtherance of it.

6 Paragraph -- or subpoint IV, Trade And Commerce.

7 Paragraph 7. During the period covered by this  
8 Information, the defendant's employer and its co-conspirators:  
9 (1) manufactured packaged ice; (2) distributed packaged ice to  
10 retailers in southeastern Michigan and the Detroit, Michigan,  
11 metropolitan area; and (3) caused packaged ice to be purchased  
12 from, sold to, or distributed from or to individuals or  
13 companies located inside and outside of southeastern Michigan  
14 and the Detroit, Michigan, metropolitan area.

15 Paragraph 8. During the period covered by this  
16 Information, substantial quantities of packaged ice  
17 manufactured and sold by the defendant was shipped across state  
18 lines in a continuous and uninterrupted flow of interstate  
19 trade and commerce.

20 9. The business activities of the defendant and  
21 co-conspirators that are subject of this Information were  
22 within the flow of, and substantially affected, interstate  
23 trade and commerce.

24 Venue.

25 Paragraph 10. The conspiracy charged in this Information



1 was formed and carried out within the Southern District of  
2 Ohio, Western Division. At least one of the conspiratorial  
3 discussions described above took place in Cincinnati, Ohio,  
4 which is located within the Southern District of Ohio. Acts in  
5 furtherance of this conspiracy were carried out within the five  
6 years preceding the filing of this Information.

7 All in violation of Title 15, United States Code, Section  
8 1.

9 And the Information is signed by the assistant attorney  
10 general, the deputy assistant attorney general, the director of  
11 criminal enforcement, the chief of our office, and myself.

12 THE COURT: Mr. Michael, have you explained to your  
13 client this Information and the charge contained therein?

14 MR. MICHAEL: I have, Judge.

15 THE COURT: Do you have any questions about this  
16 proceeding at this time? And all we're talking about now is  
17 whether you will present your case to a grand jury.

18 THE DEFENDANT: I don't have any questions.

19 THE COURT: All right. If it is your desire -- and do  
20 you have any questions about the Information?

21 THE DEFENDANT: No.

22 THE COURT: If it's your desire to give up your right  
23 to have the matter go immediately before this Court and give up  
24 your right to waive the consideration by the grand jury, you  
25 may sign the written waiver that's there before you.

1 And please explain it to him, Mr. Michael.

2 MR. MICHAEL: Yes, Judge. We have previously.

3 THE COURT: Let the record show the trial judge  
4 observes the defendant signing the document here in open court.

5 MR. MICHAEL: Judge, for the record, I've signed it as  
6 well.

7 THE COURT: Any questions, Mr. Larson?

8 THE DEFENDANT: No, sir.

9 THE COURT: And this is what you wish to do?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I'll accept the waiver. And this is your  
12 signature on the document?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I'll accept the waiver and will order the  
15 Information filed as the charging document in this case.

16 Mr. Michael, how do you plead to the charge in this case?  
17 Or I'm sorry. Mr. Larson.

18 MR. MICHAEL: Not guilty.

19 THE COURT: Mr. Larson, how do you plead to the charge  
20 in this case?

21 THE DEFENDANT: I plead guilty, sir.

22 THE COURT: Before I can accept your plea of guilty, I  
23 must determine that it is made voluntarily, with an  
24 understanding of the nature of the charge and the consequences  
25 of your plea. By offering to plead guilty, you do give up some

1 of your constitutional rights, and that giving up must be an  
2 intentional giving up of rights and privileges that you now  
3 have.

4 Please understand that I need not accept your plea of  
5 guilty unless satisfied of your guilt and that you fully  
6 understand your rights. In order to do this, I must ask you  
7 some questions.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Before I do, it's necessary that you  
10 obligate yourself to tell the truth. Once having been sworn,  
11 your answers to my questions will be subject to the penalties  
12 of perjury, of making a false statement, or possibly contempt  
13 of court if you do not answer truthfully.

14 Are you willing to accept the obligation to tell the truth?

15 THE DEFENDANT: Yes, sir, I am.

16 THE COURT: Swear the witness.

17 COURTROOM DEPUTY: Mr. Larson, raise your right hand.

18 (The defendant was duly sworn by the courtroom deputy.)

19 COURTROOM DEPUTY: Thank you. Be seated.

20 THE COURT: Mr. Larson, how old are you, sir?

21 THE DEFENDANT: 48.

22 THE COURT: And how much education do you have?

23 THE DEFENDANT: I went to Gustavus Adolphus College.  
24 I finished four years. I'm one degree short of my bachelor's.

25 THE COURT: We're conversing in the English language?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Can you understand me?

3 THE DEFENDANT: Yes, sir, I can.

4 THE COURT: I can understand you.

5 THE DEFENDANT: (Nods head up and down.)

6 THE COURT: Have you taken any narcotic drugs,  
7 medicine or pills, or drunk any alcoholic beverages in the past  
8 24 hours?

9 THE DEFENDANT: No, sir.

10 THE COURT: Mr. Michael, do you have any question or  
11 any doubt as to the defendant's competency to plead at this  
12 time?

13 MR. MICHAEL: I do not, Judge.

14 THE COURT: Mr. Larson, just a few minutes ago we read  
15 together the charge in this case, the Information. Do you  
16 understand the nature and meaning of this charge?

17 THE DEFENDANT: Yes, I do, sir.

18 THE COURT: Have you told your lawyer everything you  
19 know about this case?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: Do you believe your lawyer is fully  
22 informed about the facts and circumstances on which this charge  
23 is based?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Has your lawyer fully informed counsel and

1 advised you on the nature and meaning of this charge?

2 THE DEFENDANT: Yes, he has.

3 THE COURT: Now, before you can be found guilty of  
4 this charge, the United States must prove certain things or  
5 elements, as we call them, and they must prove them beyond a  
6 reasonable doubt to a jury of 12 individuals that we'll pick at  
7 random. You and I will help select them, and then they must be  
8 convinced beyond a reasonable doubt of your guilt and that you  
9 committed these elements.

10 The elements for conspiracy to restrain trade, in violation  
11 of Section 1 of the Sherman Act, are -- and they must be  
12 proved, as I said, beyond a reasonable doubt -- one, that the  
13 conspiracy, that is, the agreement or understanding described  
14 in the Information was knowingly formed and was existing at or  
15 about the time alleged, which was, as we recall, March 1, 2005,  
16 until and at least July 17th, 2007, and that one of the  
17 agreements or meetings or one of the incidents occurred here in  
18 the Southern District of Ohio.

19 And the Southern District of Ohio is the southern half of  
20 Ohio. If you would draw a line from the east to the west  
21 corner just north of Columbus, and the land south of that would  
22 be the Southern District of Ohio, to the Ohio River. Now,  
23 Cincinnati, Hamilton County, Butler County, Hamilton city,  
24 Lebanon city are all in the Southern District of Ohio, for your  
25 information.

1 Further, the next one is that you knowingly became a member  
2 of the conspiracy, agreement or understanding as charged and  
3 that the conspiracy constituted an unreasonable restraint of  
4 interstate commerce and that the offense was carried out in  
5 part in the Southern District of Ohio within the five years  
6 preceding the filing of the Information.

7 Now, do you understand that, if you plead guilty, you will  
8 admit beyond a reasonable doubt that you did these elements or  
9 things?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: And that you committed the facts that were  
12 alleged and actions that were alleged in the Information?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, do you know what the maximum possible  
15 penalty for this offense is?

16 THE DEFENDANT: I recall, I believe, 12 to 18 months.  
17 Is that --

18 THE COURT: Well, you evidently have discussed the  
19 matter with your attorney and you have jumped to the Guideline  
20 determination.

21 THE DEFENDANT: I apologize.

22 THE COURT: That's all right. No, I'm glad to know  
23 that you've got some target in your mind.

24 But so we understand each other, and since the Guidelines  
25 are advisory only --

1           THE DEFENDANT:   Yes, sir.

2           THE COURT:   -- it's well you understand what the  
3 maximum penalty is. And the maximum penalty is up to ten years  
4 in prison; up to a million dollar fine, or two times the gross  
5 pecuniary loss or gain; three years of supervised release; a  
6 hundred dollar special assessment; and restitution.

7           Now, the importance of supervised release is this, that at  
8 the time of sentencing, if you're sentenced to the  
9 penitentiary, you will also be assigned a period of supervised  
10 release. At the time of sentencing, conditions will be placed  
11 on your conduct during the term of that supervised release. If  
12 you should violate the terms of your supervised release, those  
13 conditions, you could be returned to the penitentiary for a  
14 period of time, which it could be as much as two years and,  
15 under certain circumstances, even maybe longer. So that when  
16 you're talking or thinking about what we're doing here today,  
17 under the worst set of circumstances you might spend at  
18 least -- or could spend 12 years in the penitentiary.

19          Do you understand?

20          THE DEFENDANT:   Yes, sir.

21          THE COURT:   Now, do you understand that, if I would so  
22 choose, that after I accept your plea of guilty I could  
23 sentence you to that maximum penalty?

24          THE DEFENDANT:   Yes, I do.

25          THE COURT:   Now, you are, from what you've told me,

1 aware that the Sentencing Guidelines apply to your case, and  
2 they are a very important consideration that we must discuss  
3 fully at the time of sentencing. However -- and I need to make  
4 you aware that there is no provision for parole under the  
5 Sentencing Reform Act. Do you understand?

6 THE DEFENDANT: I'm not sure I --

7 MR. MICHAEL: Could I have a moment, Your Honor?

8 THE COURT: Yes.

9 (Mr. Michael and the defendant confer privately.)

10 THE DEFENDANT: Mr. Michael explained it to me. I do  
11 understand.

12 THE COURT: In other words, what happens now under the  
13 law, that the sentence I impose is the sentence that you'll  
14 serve, and the only respite would be time off for what good  
15 behavior the Bureau of Prisons might give you.

16 THE DEFENDANT: Okay.

17 THE COURT: That you would earn.

18 And do you understand that, despite the Sentencing  
19 Guidelines, that the Court can impose a sentence that is more  
20 severe or less severe than the Guidelines?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand that, under certain  
23 circumstances, either you or the United States may appeal the  
24 sentence imposed?

25 THE DEFENDANT: Yes.



1           THE COURT: And there are other collateral  
2 consequences, some of which are you might lose your right to  
3 vote. You will lose the right to possess a firearm. You may  
4 lose your obligation to serve on a jury duty or hold public  
5 office.

6           Are you an American citizen?

7           THE DEFENDANT: Yes, sir, I am.

8           THE COURT: Please understand that, after you are  
9 sentenced, you will have no right to withdraw your guilty plea.

10          THE DEFENDANT: I understand.

11          THE COURT: Now, the obligation that we have under the  
12 instructions from Congress, which are set forth in Title 18,  
13 United States Code, Section 3553 are these, or is this,  
14 really: that it's our duty, or my duty with your help, to  
15 determine a sentence that is sufficient but not greater than  
16 necessary to vindicate the desires of Congress in the  
17 sentencing which are set forth in this section.

18          One of those items is the Sentencing Guidelines, which are  
19 advisory. The other considerations that we must discuss and  
20 determine are the nature and circumstances of the offense, your  
21 history and characteristics, the need for the sentence imposed  
22 to reflect the seriousness of the offense, to promote respect  
23 for the law, and to provide just punishment for the offense, to  
24 afford adequate deterrence to criminal conduct generally, to  
25 protect the public from further crimes you may commit, to

1 provide you with any needed educational or vocational training,  
2 medical care, or other correctional treatment, in the most  
3 effective manner, the kinds of sentences available and the  
4 kinds of sentences that are provided by the applicability of  
5 the Sentencing Guidelines.

6 Now, do you understand that we will consider all those  
7 elements at the time of sentencing and that your sentence, the  
8 bottom line, that it must be sufficient but not greater than  
9 necessary to accomplish the purpose Congress has set forth for  
10 us to follow and to achieve?

11 THE DEFENDANT: (Nods head up and down.)

12 THE COURT: Now, since you know the maximum penalty  
13 for the offense, the considerations that will be deciding  
14 factors in the sentence, do you still wish to plead guilty?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Now, do you understand that if I accept  
17 your plea of guilty, I may or may not place you on probation?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I advise you that, under the Constitution  
20 and laws of the United States, you have the right to plead not  
21 guilty. You have the right to be tried by a jury, and at such  
22 a speedy and public trial you would have the right to the  
23 assistance of a lawyer, the right to confront and cross-examine  
24 witnesses against you, and the right not to be compelled to  
25 incriminate yourself.

1       At such trial you would be presumed innocent until such  
2 time, if ever, as the government established your guilt by  
3 legal evidence beyond a reasonable doubt. At such trial you  
4 would be entitled to compulsory process, to call witnesses on  
5 your behalf.

6       Do you understand --

7               THE DEFENDANT: Yes, I do.

8       THE COURT: -- that if you plead guilty, you give up  
9 all these rights that I have mentioned?

10              THE DEFENDANT: Yes, I do.

11       THE COURT: Do you understand that if you plead  
12 guilty, there will not be a further trial of any kind in your  
13 case, so that by pleading guilty you are giving up the right to  
14 a trial?

15              THE DEFENDANT: Yes, I do.

16       THE COURT: Do you understand that if your plea of  
17 guilty is accepted, the judge can impose the same penalty as  
18 though you pled not guilty, stood trial, and had been convicted  
19 by a jury?

20              THE DEFENDANT: Yes, I do.

21       THE COURT: If you plead guilty, do you understand  
22 that there will also have to -- you will also have to give up  
23 your right not to incriminate yourself since I will have to ask  
24 questions about what you did in order to satisfy me that you  
25 are guilty as charged and you will have to acknowledge your

1 guilt?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you willing to give up your right to a  
4 trial and the other rights I have just discussed?

5 THE DEFENDANT: Yes, sir, I am.

6 THE COURT: Proper plea agreements are permissible.  
7 However, you and the lawyers have a duty to state into the  
8 record the terms of any plea agreement and any agreement that  
9 you may have.

10 It's my understanding that you have entered into a plea  
11 agreement in this case; is that correct?

12 THE DEFENDANT: That's correct, sir.

13 THE COURT: I'm going to ask Mr. Culum to put the plea  
14 agreement into the record. Please follow along as he does so,  
15 because after he has completed his presentation, I will ask you  
16 some questions about the plea agreement.

17 THE DEFENDANT: Okay.

18 THE COURT: Proceed, sir.

19 MR. CULUM: Thank you, Your Honor.

20 The plea agreement is entitled "United States of America v.  
21 Frank G. Larson." Preliminary words: The United States of  
22 America and Frank G. Larson, the defendant, hereby enter into  
23 the following plea agreement pursuant to Rule 11(c)(1)(B) of  
24 the Federal Rules of Criminal Procedure:

25 Paragraph 1, the Rights Of Defendant. The defendant

1 understands his rights:

2 (a) to be represented by an attorney;

3 (b) to be charged by Indictment;

4 (c) to plead not guilty to any criminal charge brought  
5 against him;

6 (d) to have a trial by jury, at which he would be presumed  
7 not guilty of the charge and the United States would have to  
8 prove every essential element of the charged offense beyond a  
9 reasonable doubt for him to be found guilty;

10 (e) to confront and cross-examine witnesses against him and  
11 to subpoena witnesses in his defense at trial;

12 (f) not to be compelled to incriminate himself;

13 (g) to appeal his conviction, if he is found guilty; and

14 (h) to appeal the imposition of sentence against him.

15 Agreement To Plead Guilty And Waive Certain Rights.

16 Paragraph 2. The defendant knowingly and voluntarily  
17 waives the rights set out in paragraph 1(b) through (h) above.  
18 The defendant also knowingly and voluntarily waives the right  
19 to file any appeal, any collateral attack, or any other writ or  
20 motion including, but not limited to, an appeal under 18 U.S.C.  
21 Section 3742, or a motion under 28 U.S.C. Section 2241 or 2255,  
22 that challenges the sentence imposed by the Court if that  
23 sentence is consistent with the Guideline calculations  
24 described in paragraph 8 of this plea agreement. This  
25 agreement does not affect the rights or obligations of the

1 United States as set forth in 18 U.S.C. Section 3742(b) .

2 Nothing in this paragraph, however, shall act as a bar to the  
3 defendant perfecting any legal remedies he may otherwise have  
4 on appeal or collateral attack respecting the claims of  
5 ineffective assistance of counsel or prosecu-- prosecutorial  
6 misconduct.

7 I have difficulty saying that.

8 Pursuant to Federal Rule of Criminal Procedure 7(b), the  
9 defendant will waive indictment and plead guilty at an  
10 arraignment to a one-count Information to be filed in the  
11 United States District Court for the Southern District of Ohio.  
12 The Information will charge the defendant with participating in  
13 a conspiracy to suppress and eliminate competition by agreeing  
14 with other packaged-ice manufacturers to allocate customers in  
15 southeastern Michigan and the Detroit, Michigan, metropolitan  
16 area, beginning at least as early as March 1st, 2005, and  
17 continuing until at least July 17, 2007, in violation of the  
18 Sherman Antitrust Act, 15 U.S.C. Section 1.

19 Paragraph 3. The defendant, pursuant to the terms of this  
20 plea agreement, will plead guilty to the criminal charge  
21 described in paragraph 2 above and will make a factual  
22 admission of guilt to this Court, in accordance with Federal  
23 Rules of Criminal Procedure 11, as set forth in paragraph 4  
24 below. The United States agrees that, at the arraignment, it  
25 will stipulate to the release of the defendant on his personal

1 recognizance, pursuant to 18 U.S.C. Section 3142, pending the  
2 sentencing hearing in this case.

3 Factual Basis For The Offense Charged.

4 Paragraph 4. Had this case gone to trial, the United  
5 States would have presented evidence sufficient to prove the  
6 following facts:

7 (a) For purposes of this plea agreement, the relevant  
8 period is that period beginning at least as early as March 1st,  
9 2005, and continuing until at least July 17th, 2007. During  
10 the relevant period, the defendant was employed by Artic  
11 Glacier International Inc., "Artic Glacier," a corporation  
12 organized and existing under the laws of the state of Delaware,  
13 which does business in multiple states, with its principal  
14 place of business in St. Paul, Minnesota. During the relevant  
15 period, the defendant was most recently employed by Artic  
16 Glacier as its executive vice president of operations. During  
17 the relevant period, Artic Glacier was a producer of packaged  
18 ice in multiple states and was engaged in the sale of packaged  
19 ice. Packaged ice is marketed as a high-grade ice for human  
20 consumption and is sold in varying sizes, blocks, big bags, and  
21 small bags.

22 (b) During the relevant period, the defendant participated  
23 in a conspiracy to allocate customers of packaged ice sold in  
24 southeastern Michigan and the Detroit, Michigan, metropolitan  
25 area. In furtherance of the conspiratorial activity, the

1 defendant or his subordinates engaged in discussions with  
2 representatives of other packaged-ice producers. During these  
3 discussions, agreements were reached to allocate customers of  
4 packaged ice to be sold in southeastern Michigan and the  
5 Detroit, Michigan, metropolitan area.

6 (c) During the relevant period, Arctic Glacier's sales of  
7 packaged ice affecting customers totaled over \$10 million.

8 (d) During the relevant period, packaged ice sold by one or  
9 more of the conspirator firms, and equipment and supplies  
10 necessary to the production and distribution of packaged ice,  
11 as well as payments for packaged ice, traveled in interstate  
12 commerce. The business activities of the defendant's employer  
13 and its co-conspirators in connection with the production and  
14 sale of packaged ice affected by this conspiracy were within  
15 the flow of, and substantially affected, interstate trade and  
16 commerce.

17 (e) Acts in furtherance of this conspiracy were carried out  
18 within the Southern District of Ohio, Western Division. At  
19 least one of the conspiratorial discussions described above  
20 took place in Cincinnati, Ohio, which is located within the  
21 Southern District of Ohio.

22 Possible Maximum Sentence.

23 Paragraph 5. The defendant understands that the statutory  
24 maximum penalty which may be imposed against him upon  
25 conviction for a violation of Section 1 of the Sherman Act is:



1 (a) a term of imprisonment for ten years, 15 U.S.C. Section  
2 1;

3 (b) a fine in an amount equal to the greatest of (1) 1  
4 million, (2) twice the gross pecuniary gain the conspirators  
5 derived from the crime, or (3) twice the pecuniary loss caused  
6 to the victims of the crime by the conspirators, 15 U.S.C.  
7 Section 1, 18 U.S.C. Section 3571(b) and (d); and

8 (c) a term of supervised release of three years following  
9 any term of imprisonment. If the defendant violates any  
10 condition of supervised release, the defendant could be  
11 required to serve up to two years in prison, 18 U.S.C. Section  
12 3559(a)(3), 18 U.S.C. Section 3583(b)(2) and (e)(3), and the  
13 United States Sentencing Guidelines Section 5D1.2(a)(2).

14 Paragraph 6. In addition, the defendant understands that:

15 (a) pursuant to U.S.S.G. 5E1.1 or 18 U.S.C. Section  
16 3663(a)(3) or 3583(d), the Court may order him to pay  
17 restitution to the victims of the offense; and

18 (b) pursuant to 18 U.S.C. Section 3013(a)(2)(A), the Court  
19 is required to order the defendant to pay a \$100 special  
20 assessment upon conviction for the charged crime.

21 The Sentencing Guidelines.

22 Paragraph 7. The defendant understands that the Sentencing  
23 Guidelines are advisory, not mandatory, but that the Court must  
24 consider the Guidelines in effect on the day of sentencing,  
25 along with other factors set forth in 18 U.S.C. Section

1 3553(a), in determining and imposing sentence. The defendant  
2 understands that the Guidelines determination will be made by  
3 the Court by a preponderance of the evidence standard. The  
4 defendant understands that although the Court is not ultimately  
5 bound to impose a sentence within the applicable Guidelines  
6 range, its sentence must be reasonable based upon consideration  
7 of all relevant sentencing factors set forth in 18 U.S.C.

8 Section --

9 THE COURT: I want to just interrupt then. The duty  
10 of the District Court, which is me, is to impose a sentence  
11 that is sufficient but not greater than necessary to effect the  
12 terms of the statute. It's up to the Sixth Circuit Court of  
13 Appeals to determine whether that sentence is reasonable.

14 THE DEFENDANT: Okay.

15 THE COURT: So I point that out now so that you'll  
16 understand the purpose that you and I have at the time of  
17 sentencing.

18 THE DEFENDANT: Okay.

19 THE COURT: Proceed.

20 MR. CULUM: Thank you, Your Honor.

21 Pursuant to United States Sentencing Guideline Section  
22 1B1.8, the United States agrees that self-incriminating  
23 information that the defendant provides to the United States  
24 pursuant to this plea agreement will not be used to increase  
25 the volume of affected commerce attributable to the defendant

1 or in determining the defendant's applicable Guideline range,  
2 except to the extent provided in United States Sentencing  
3 Guideline Section 1B1.8(b) .

4 Paragraph 8. Pursuant to United States Sentencing  
5 Guideline Section 6B1.4, the United States and the defendant  
6 enter into the following stipulations:

7 (a) The base offense level for the offense to which the  
8 defendant is pleading guilty, as established by the United  
9 States Sentencing Guidelines Section 2R1.1(a), is 12.

10 (b) The volume of commerce attributable to the defendant  
11 within the meaning of the United States Sentencing Guideline  
12 Section 2R1.1(b) (2) is more than 10 million but less than 40  
13 million, which increases the offense level by four.

14 (c) For purposes of United States Sentencing Guidelines  
15 Section 3E1.1, a three-level reduction of the offense level for  
16 the defendant's acceptance of responsibility is appropriate.  
17 However, should the United States obtain or receive additional  
18 evidence or information prior to sentencing that, in its sole  
19 discretion, it determines to be credible and materially in  
20 conflict with this stipulation, then the United States shall no  
21 longer be bound by this stipulation.

22 (d) Based on the foregoing, defendant's adjusted offense  
23 level for the offense to which he is pleading guilty is 13.  
24 The Guidelines incarceration range for offense level 13 is 12  
25 to 18 months' imprisonment. The defendant's appropriate

1 Guidelines fine range is governed by 2R1.1(c)(1).

2 THE COURT: I think that is really (c)(1); it's not  
3 1(c)(1).

4 MR. CULUM: You may be correct, Your Honor.

5 THE COURT: I am.

6 MR. CULUM: You are correct, Your Honor. Excuse me.  
7 I am incorrect; you are correct. I apologize for the mistake.

8 Okay. Paragraph 9. Sentencing Agreement. The defendant  
9 understands that the sentence to be imposed on him is within  
10 the sole discretion of the sentencing judge. The United States  
11 cannot and does not make any promises or representations as to  
12 what sentence he will receive and is free to recommend any  
13 specific sentence to the Court. However, the United States  
14 will inform the probation office and the Court of (a) this  
15 agreement; (b) the nature and extent of the defendant's  
16 activities with respect to this case and all other activities  
17 of the defendant which the United States deems relevant to  
18 sentencing; and (c) the nature and extent of the defendant's  
19 cooperation with the United States. In so doing, the United  
20 States may use any information it deems relevant, including  
21 information provided by the defendant both prior and subsequent  
22 to the signing of this agreement. The United States reserves  
23 the right to make any statement to the Court or the probation  
24 office concerning the nature of the criminal violation charged  
25 in the Information, the participation of the defendant therein,

1 and any other facts or circumstances that it deems relevant.  
2 The United States also reserves the right to comment on or to  
3 correct any representation made by or on behalf of the  
4 defendant, and to supply any other information that the Court  
5 may require.

6 10. If the United States determines that the defendant has  
7 provided substantial assistance in any investigation or  
8 prosecution in the packaged-ice industry, and has otherwise  
9 fully complied with all the terms of this plea agreement, it  
10 will file a motion, pursuant to United States Sentencing  
11 Guideline 5K1.1, advising the sentencing judge of all relevant  
12 facts pertaining to that determination and requesting the Court  
13 to sentence the defendant in light of the factors set forth in  
14 United States Sentencing Guideline Section 5K1.1(a)(1) through  
15 (5). The defendant acknowledges that the decision whether he  
16 has provided substantial assistance in any investigation or  
17 prosecution of the packaged-ice industry and has otherwise  
18 complied with the terms of this plea agreement is within the  
19 sole discretion of the United States. It is understood that,  
20 should the United States determine that the defendant has not  
21 provided substantial assistance in any investigation or  
22 prosecution of the packaged-ice industry, or should the United  
23 States determine that the defendant has violated any provision  
24 of this plea agreement, such a determination will release the  
25 United States from any obligation to file a motion pursuant to

1 United States Section 5K1.1, but will not entitle the defendant  
2 to withdraw his guilty plea once it has been entered. The  
3 defendant further understands that, whether or not the United  
4 States files a motion pursuant to United States Sentencing  
5 Guideline 5K1.1, the sentence to be imposed on him remains  
6 within the sole discretion of the sentencing judge. To enable  
7 the Court to have the benefit of all the relevant sentencing  
8 information, the United States may request that sentencing be  
9 postponed until his cooperation is complete.

10 Paragraph 11. The parties agree that they are not aware at  
11 this time of any aggravating or mitigating circumstances of a  
12 kind, or to a degree, not adequately taken into consideration  
13 by the United States Sentencing Commission in formulating the  
14 Sentencing Guidelines justifying a departure pursuant to United  
15 States Sentencing Guideline Section 5K2.0.

16 Paragraph 12. In light of the availability of civil causes  
17 of actions available pursuant to 15, United States Code,  
18 Section 15, the United States agrees it will not seek a  
19 restitution order for the offense charged in the Information.

20 Paragraph 13. The defendant understands that the Court  
21 will order him to pay a \$100 special assessment pursuant to 18  
22 U.S.C. Section 3013(a)(2)(A) in addition to any fine imposed.

23 Paragraph 14. The defendant understands that, as provided  
24 in Federal Rules of Criminal Procedure 11(c)(3)(B), if the  
25 Court does not impose a sentence consistent with either party's

1 sentencing recommendation, he nevertheless has no right to  
2 withdraw his plea of guilty.

3 The Defendant's Cooperation.

4 Paragraph 15. The defendant will cooperate fully and  
5 truthfully with the United States in the prosecution of this  
6 case, the conduct of the current federal investigation of  
7 violations of federal antitrust and related criminal laws  
8 involving the sale of packaged ice in the United States, and  
9 any other federal investigation resulting therefrom, and any  
10 litigation or other proceeding arising or resulting from any  
11 such investigation to which the United States is a party. The  
12 ongoing, full, and truthful cooperation of the defendant shall  
13 include, but not be limited to:

14 (a) producing all non-privileged documents, including  
15 claimed personal documents, and other materials, wherever  
16 located, in the possession, custody, or control of the  
17 defendant, requested by attorneys and agents of the United  
18 States;

19 (b) making himself available for interviews, not at the  
20 expense of the United States, upon the request of attorneys and  
21 agents of the United States;

22 (c) responding fully and truthfully to all inquiries of the  
23 United States in connection with any federal proceeding,  
24 without falsely implicating any person or intentionally  
25 withholding any information, subject to the penalties of making

1 false statement, 18 U.S.C. Section 1001, and obstruction of  
2 justice, 18 U.S.C. Section 1503, et sequentes;

3 (d) otherwise voluntarily providing the United States with  
4 any non-privileged material or information not requested in (a)  
5 through (c) of this paragraph, that he may have that is related  
6 to any federal proceeding; and

7 (e) when called upon to do so by the United States in  
8 connection with any federal proceeding, testifying in grand  
9 jury, trial, and other judicial proceedings, fully, truthfully,  
10 and under oath, subject to the penalties of perjury, making  
11 false statements or declarations in grand jury or court  
12 proceedings, contempt, and obstruction of justice.

13 The Government's Agreement.

14 Section 16. Subject to the full, truthful, and continuing  
15 cooperation of the defendant, as described in paragraph 15 of  
16 this plea agreement, and upon the Court's acceptance of the  
17 guilty plea called for by this plea agreement and imposition of  
18 this sentence as provided by the Court, the United States will  
19 not bring further criminal charges against the defendant for  
20 any act or offense committed before the date of this plea  
21 agreement that was undertaken in furtherance of an attempted or  
22 completed antitrust conspiracy involving the sale of packaged  
23 ice or undertaken in connection with any investigation of such  
24 a conspiracy, the "relevant offense." The non-prosecution  
25 terms of this paragraph do not apply to civil matters of any



1 kind, to any violation of federal tax or security laws, or to  
2 any crime of violence.

3 Paragraph 17. The defendant understands that he may be  
4 subject to administrative action by federal or state agencies  
5 other than the United States Department of Justice, Antitrust  
6 Division, based upon the conviction resulting from this plea  
7 agreement, and that this plea agreement in no way controls  
8 whatever action, if any, other agencies may take. However, the  
9 United States agrees that, if requested, it will advise the  
10 appropriate officials of any governmental agency considering  
11 such administrative action of the fact, manner, and extent of  
12 cooperation of the defendant as a matter for that agency to  
13 consider before determining what administrative action, if any,  
14 to take.

15 Representation By Counsel.

16 Paragraph 18. The defendant has reviewed all legal and  
17 factual aspects of this case with his attorney and is fully  
18 satisfied with his attorney's legal representation. The  
19 defendant has thoroughly reviewed this plea agreement with his  
20 attorney and has received satisfactory explanations from his  
21 attorney concerning each paragraph of this plea agreement and  
22 alternatives available to defendant other than entering into  
23 this plea agreement. After conferring with his attorney and  
24 considering all available alternatives, the defendant has made  
25 a knowing and voluntary decision to enter into this plea

1 agreement.

2 Voluntary Plea.

3 The defendant's decision to enter into this plea agreement  
4 and to tender a plea of guilty is freely and voluntarily made,  
5 is not the result of force, threats, assurances, promises or  
6 representations other than the representations contained in  
7 this plea agreement. The United States has made no promises or  
8 representations to the defendant as to whether the Court will  
9 accept or reject the representations contained within this plea  
10 agreement.

11 Violation Of Plea Agreement.

12 Paragraph 20. The defendant agrees that, should the United  
13 States determine in good faith, during the period that any  
14 federal proceeding is pending, that the defendant has failed to  
15 provide full and truthful cooperation, as described in  
16 paragraph 15 of this plea agreement, or has otherwise violated  
17 any provision of this plea agreement, the United States will  
18 notify the defendant or his counsel in writing by personal or  
19 overnight delivery or facsimile transmission and may also  
20 notify his counsel by telephone of its intention to void any of  
21 its obligations under this plea agreement, except its  
22 obligations under this paragraph, and the defendant shall be  
23 subject to prosecution for any federal crime of which the  
24 United States has knowledge including, but not limited to, the  
25 substantive offenses related to the investigations resulting in

1 the plea agreement. The defendant agrees that, in the event  
2 that the United States is released from its obligations under  
3 this plea agreement and brings criminal charges against the  
4 defendant for any relevant offense, the statute of limitations  
5 period for such offense shall be tolled for the period between  
6 the date of the signing of this plea agreement and six months  
7 after the date the United States gave notice of its intent to  
8 void its obligations under this plea agreement.

9 Paragraph 21. The defendant understands and agrees that in  
10 any further prosecution of him resulting from the release of  
11 the United States from its obligations under this plea  
12 agreement based on defendant's violation of this plea  
13 agreement, any documents, statements, information, testimony,  
14 or evidence provided by him to attorneys or agents of the  
15 United States, federal grand juries, or courts, and any leads  
16 derived therefrom, may be used against him in any such further  
17 prosecution. In addition, the defendant unconditionally waives  
18 his right to challenge the use of such evidence in any such  
19 further prosecution, notwithstanding the protections of Federal  
20 Rule of Evidence 410.

21 The Entirety Of The Agreement.

22 Paragraph 22. This plea agreement constitutes the entire  
23 agreement between the United States and the defendant  
24 concerning the disposition of the criminal charge in this case.  
25 This plea agreement cannot be modified except in writing,

1 signed by the United States and the defendant.

2 Paragraph 23. The undersigned attorneys for the United  
3 States have been authorized by the Attorney General of the  
4 United States to enter this plea agreement on behalf of the  
5 United States.

6 The plea agreement is signed, is dated September 11th,  
7 2009. It is signed by Mr. Larson and Mr. Michael and as well  
8 by me.

9 THE COURT: Mr. Larson, is that your signature at the  
10 end of the plea agreement?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: Would you read me the last -- or the  
13 paragraph 22 of the plea agreement.

14 THE DEFENDANT: "This plea agreement constitutes the  
15 entire agreement between the United States and the defendant  
16 concerning the disposition of the criminal charge in this case.  
17 This plea agreement cannot be modified except in writing,  
18 signed by the United States and the defendant."

19 THE COURT: The agreements that you've made in this  
20 plea agreement, do you have any questions about them?

21 THE DEFENDANT: No, sir, I don't.

22 THE COURT: And you're under oath. Do you agree,  
23 then, that your agreements in this plea agreement are true and  
24 correct?

25 THE DEFENDANT: Yes, they are.

1           THE COURT:   Aside from the plea agreement, has anyone  
2 made any promise to you of any kind that induced you to plead  
3 guilty?

4           THE DEFENDANT:   No, they did not.

5           THE COURT:   Aside from the plea agreement, which we've  
6 been discussing, has any agent or officer of the United States  
7 or any government, has any lawyer, any lawyer, has anyone  
8 promised or even suggested that you'll receive a lighter  
9 sentence or any other form of leniency if you plead guilty?

10          THE DEFENDANT:   No, they have not.

11          THE COURT:   Have any threats been made that induced  
12 you to plead guilty?

13          THE DEFENDANT:   No, sir.

14          THE COURT:   Is it fair, then, for me to believe that  
15 this decision of yours to plead guilty is your voluntary act  
16 and deed?

17          THE DEFENDANT:   Yes, it is.

18          THE COURT:   Do you have any questions at this time?

19          THE DEFENDANT:   No, sir, I don't.

20          THE COURT:   Is it fair for me to believe, then, that  
21 you're pleading guilty here today with a full understanding of  
22 the nature of the charge against you and the consequences of  
23 that plea of guilty?

24          THE DEFENDANT:   Yes, that's true.

25          THE COURT:   Would you turn to page 7 of the -- or no,

1 it's 3 of the plea agreement, please.

2 Now, would you paraphrase what happened here. We've  
3 already gone through the record that you admit these facts to  
4 be the truth that's set forth here in the fourth paragraph. Do  
5 you see?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, would you tell me what happened.

8 THE DEFENDANT: Yes, sir. I was aware of  
9 conversations between Arctic employees and competitors  
10 regarding customers that either we serviced or they serviced in  
11 the Michigan marketplace. And customers would contact us  
12 either regarding the competitor's service and ask us to come  
13 see them, to inquire about servicing.

14 There were times that Arctic employees would contact the  
15 competitor and give them a heads-up and give them a  
16 notification that a customer called and give them a timeline,  
17 or give them one or two weeks to say, "Here. This customer  
18 called. Here's the issue. Fix it or we're going to take the  
19 customer."

20 I was aware of those conversations. I participated in one  
21 of those conversations. I shared with my -- with senior  
22 management at Arctic Glacier that these types of conversations  
23 were taking place.

24 THE COURT: And did at least one of the agreements  
25 occur down here in Cincinnati?

1 THE DEFENDANT: I believe it was by phone with someone  
2 here in Cincinnati.

3 THE COURT: Cincinnati was involved?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Michael, has your investigation into  
6 the facts of this case established the truth of the factual  
7 basis for the offense charged?

8 MR. MICHAEL: Yes, Judge.

9 THE COURT: Mr. Larson, is it fair, then, for me to  
10 believe that you're pleading guilty here today because you are,  
11 in fact, guilty of a violation of the Sherman Antitrust Act,  
12 Section 1?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Culum, is there anything further that  
15 I should discuss with the defendant before I make my findings  
16 in the matter?

17 MR. CULUM: No, Your Honor. We just would like the  
18 Court to know that he has been cooperating, we fully expect him  
19 to continue to cooperate, and we have nothing further to say.  
20 But he has been very cooperative and has been very forthright  
21 with his participation and acknowledgment of the conduct that  
22 he was involved in.

23 THE COURT: Mr. Michael, anything you wish the Court  
24 to discuss with the defendant or you wish to put on the record  
25 before I make my findings?

1 MR. MICHAEL: No, Judge. I believe Mr. Larson fully  
2 understands what's going on. I've discussed all of the  
3 relevant sections of the plea agreement with him. We have  
4 provided to him all of the statutory cites contained within the  
5 plea agreement and gone over all of those. It's my  
6 understanding that he fully appreciates his actions today, as  
7 well as his cooperation with the Department of Justice that has  
8 occurred in the past and is anticipated to occur in the future.

9 THE COURT: Mr. Larson, any questions at this time?

10 THE DEFENDANT: No, sir.

11 THE COURT: The trial judge has observed the  
12 appearance and responsiveness of Mr. Larson, the defendant, in  
13 giving his answers to the questions asked. Based on such  
14 observation and the answers given, the trial judge is satisfied  
15 that the defendant is in full possession of his faculties. He  
16 is not suffering from any apparent physical or mental illness.  
17 He is not under the influence of narcotics or alcohol. He  
18 understands that Title 18, Section 3553 applies to his case and  
19 will be determinative of the sentence in his case that is to be  
20 sufficient but not greater than necessary to accomplish the  
21 purposes set forth by Congress in that section. He understands  
22 that the Sentencing Guidelines are an important element in that  
23 determination but they are advisory only, and the Court may  
24 sentence the defendant either greater than or less than those  
25 Guideline determinations.



1 He understands the proceeding in which he is engaged. He  
2 understands the nature and meaning of the charge and the  
3 consequences of his plea of guilty, and he is aware of all plea  
4 negotiations undertaken on his behalf.

5 Do you have any questions about any of these findings?

6 THE DEFENDANT: No, sir.

7 THE COURT: The trial judge therefore finds that the  
8 plea has been made voluntarily with understanding of the nature  
9 of the charge and the consequence of such plea. I will accept  
10 your plea of guilty and enter a judgment of guilty to the  
11 charge conspiracy to restrain trade, in violation of 15, United  
12 States Code, Section 1, the Sherman Antitrust Act.

13 The matter will be referred to the United States Department  
14 of Probation for a presentence investigation and report. The  
15 Court will take the plea agreement under advisement. The Court  
16 wishes to particularly point out the agreement not to seek  
17 restitution in this matter. That is a determination that the  
18 Court will take under advisement and consider at the time of  
19 the sentencing to see whether it is impractical to order  
20 restitution in this case. So I want you to understand that.

21 MR. CULUM: Your Honor, may I comment on that?

22 THE COURT: Yes.

23 MR. CULUM: I think you're aware, Your Honor, that  
24 there is an ongoing civil litigation among the victims of the  
25 potential crime and some of the corporate defendants, ongoing

1 in the Eastern District of Michigan. And I can get you the  
2 cite, but there's an ongoing civil case trying to establish  
3 what the proper restitution or recompense to the victims should  
4 occur. So I wanted to make you aware of that.

5 THE COURT: I, of course, have been aware of that, and  
6 I still stand on just what I said. If anybody is curious, I do  
7 not accept plea agreements until I am satisfied they're proper.  
8 I think I pointed that out here.

9 MR. CULUM: Yes.

10 MR. MICHAEL: Yes, Judge.

11 MR. CULUM: Yes, Your Honor.

12 THE COURT: All right. And hopefully we're always  
13 reasonable, but that is not my job here. It's to be  
14 sufficient, not reasonable.

15 The matter will be set for sentencing for Wednesday,  
16 February the 3rd, at 10:00 AM, and, of course, the year is  
17 2010. February 3rd, 2010, at 10:00 AM.

18 The probation department will provide a timeline for the  
19 collection of information. It's designed to have the  
20 information as complete as possible by the time of that  
21 sentencing date, in fact, at least ten days before that  
22 sentencing date, and so it is necessary that we follow along.

23 If, because of the complexities of the situation that we're  
24 facing, if there are additional problems and it's already been  
25 noted in the plea agreement, the Court will listen to reason,

1 not that I'll be reasonable, but I'll listen to reason. And  
2 the purpose of that is so that, Mr. Larson, you and I can have  
3 all the information on the table that we can consider so that I  
4 can impose a just sentence in your case that is sufficient but  
5 not greater than necessary. So your cooperation, which you've  
6 already offered willingly to the United States, please offer  
7 the same cooperation to the probation officer, which happens to  
8 be part of the United States.

9 THE DEFENDANT: Absolutely.

10 THE COURT: The matter is before the Court now on the  
11 establishment of a bond in this case. I have before me the  
12 report of the pretrial services. Has the United States  
13 received a copy of that report?

14 MR. CULUM: Yes, Your Honor.

15 THE COURT: And has the defense received a copy of the  
16 report?

17 MR. MICHAEL: We have, Judge. We've read through it.  
18 It's completely accurate except for one correction concerning  
19 Mr. Larson's wife's maiden name.

20 THE COURT: Thank you.

21 MR. MICHAEL: Other than that, the substantive  
22 information is accurate, Judge.

23 THE COURT: And what is that correction?

24 MR. MICHAEL: It is "Strand" as opposed to "Straub."

25 THE COURT: Strand?

1 MR. MICHAEL: Strand, yes, Judge.

2 THE COURT: Have you had a chance to read through it  
3 too, Mr. Larson?

4 THE DEFENDANT: Yes, sir, I have.

5 THE COURT: And you agree with the accuracy?

6 THE DEFENDANT: Yes.

7 THE COURT: The Court will accept the recommendation,  
8 hearing no objection.

9 MR. CULUM: No objection, Judge.

10 THE COURT: Since you already agreed to it in the plea  
11 agreement --

12 MR. CULUM: Right.

13 THE COURT: -- but I give you that opportunity.

14 The Court will establish the bond in the case and will  
15 establish the conditions, and the conditions while you're on  
16 bond are these, Mr. Larson: .

17 That you shall not violate any federal, state or local law  
18 while on release, that you immediately advise the Court,  
19 defense counsel, and the U.S. Attorney in writing before any  
20 change of address or telephone number, and that you appear in  
21 court as required and surrender to serve any sentence imposed,  
22 that you promise to appear in court as required and surrender  
23 to serve any sentence imposed, that you surrender any passport  
24 to the Clerk of Courts, that you obtain no new passport, that  
25 you refrain from possessing a firearm, destructive device or

1 other dangerous weapon, you refrain from any excessive use of  
2 alcohol, you refrain from the unlawful possession of narcotic  
3 drug or other controlled substances unless prescribed by a  
4 licensed medical practitioner. And the tangible matters that  
5 must be complied with today is turning the passport in.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I will hand you a copy of the bond. It  
8 also has in there the advice of penalties and sanctions. I  
9 will give that to you at this time and Mr. Michael will go over  
10 them with you. And if you accept them and you understand what  
11 you're dealing with, why, then we'll proceed.

12 (Mr. Michael and the defendant confer privately.)

13 MR. MICHAEL: Your Honor, for the record, Mr. Larson  
14 has gone over it and signed the form.

15 THE COURT: Mr. Larson, I have in my hand the  
16 acknowledgment of the defendant to the advice and penalty  
17 sections on the bond. Is that your signature?

18 THE DEFENDANT: Yes, sir, it is.

19 THE COURT: And you accept the conditions of the bond  
20 that I have imposed upon you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions at this time?

23 THE DEFENDANT: No, sir, I don't.

24 THE COURT: Does the United States have anything  
25 further they wish to add to the proceedings?

1 MR. CULUM: No, Your Honor.

2 THE COURT: Mr. Michael?

3 MR. MICHAEL: No, Judge. Thank you.

4 THE COURT: Any questions?

5 THE DEFENDANT: No.

6 THE COURT: I'll release the defendant after  
7 processing. The matter is continued until February the 3rd at  
8 10:00 o'clock, 2010.

9 Is there anything further from the United States?

10 MR. CULUM: No, Your Honor.

11 THE COURT: Anything further?

12 MR. MICHAEL: Just to alert the Court, we have Mr.  
13 Larson's passport. We'll turn that in to the Clerk's office.  
14 And he's been processed by the marshals prior to court this  
15 morning.

16 THE COURT: Have a safe trip back home.

17 MR. MICHAEL: Thank you very much.

18 THE DEFENDANT: Thank you.

19 COURTROOM DEPUTY: All rise. This honorable court is  
20 now in recess.

21 (Proceedings concluded at 11:10 AM.)

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C E R T I F I C A T E

I, Luke T. Lavin, RDR, CRR, the undersigned, certify  
that the foregoing is a correct transcript from the record of  
proceedings in the above-entitled matter.

s/Luke T. Lavin  
Luke T. Lavin, RDR, CRR  
Official Court Reporter

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